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Adams, Catharine and Adams, Mary vs. The Sheriff of the Niagara District

704.

1844.

# NIAGARA DISTRICT FALL ASSIZES.

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CATHARINE AND MARY ADAMS, vs. THE SHERIFF of the Niagara District. } SULLIVAN & FOLEY *for Pltff's*, SHERWOOD *for Defendant.*

This action was brought for Goods alleged to have belonged to the Plaintiffs, and to have been sold by the Sheriff under Execution in favor of Tobin & Murison, *vs.* George Adams.

The Hon. R. B. Sullivan opened this case with an appeal to the sympathies of the Jury, alleging that the action out of which this cause had grown was one of a series of persecutions such as characterize the unrelenting creditor—persecutions which had pursued the victim to the bed of sickness, and finally ended in causing the death of the victim—the late George Adams Esq. The learned Counsel stated that these chattels had been previously sold under execution of the same parties for costs which had occurred under a writ of Ejectment, when the Plaintiffs in this suit had purchased them to save their venerable parent the anguish of seeing his household goods torn from home in the evening of his life—and these same goods were again sold at the suit of the same parties, under protest that the property belonged to the Miss Adams's, Plaintiffs in this suit. The learned Counsel labored rather awkwardly to enlist the sympathies of the Jury in favor of these daughters of an almost murdered Father. Of course the gentleman croaked much about the virtues of the deceased parent, and the magnanimous efforts of these most amiable daughters to alleviate his distresses.

*Witness*, 1st.—R. A. Clarke—With reference to the first sale, said he was called upon on the morning of this sale by Mr. Thomas Adams, (brother to Plaintiffs) who informed him a sale was to take place, and requested him to attend and purchase for the benefit of the family. Mr. Clarke did attend and purchase, the purchases were paid for, the goods were not removed, and the purchase money returned to him by Thomas Adams. He understood the goods were taken off his hands by the Plaintiffs—had no particular bargain about them—believed they were bought in for the purpose of securing them from future executions expected to be issued against the

late Mr. Adams—believed Mr. Adams had abundant means of paying the execution without a sale being necessary to make the money, and could have had no difficulty in preventing the sale, had such been his wish—considered Mr. Adams in good credit, and not under the necessity of submitting to the mortification of this sale—never saw a published notice of the sale—attended the second sale and bought again—did not buy either time expecting to remove any of the goods.

*Witness* 2nd.—James R. Benson—Was called upon on the morning of the sale. Was told by Mr. Thomas Adams that the old man's chattels were to be sold—asked if he purposed attending it—replied no—but being urged to do so did go, and bought some part of them—borrowed money from W. H. Merritt to pay for them—went to Montreal next day—on his return was informed by T. R. Merritt that the goods had been taken to by the Plaintiffs, and the money borrowed from W. H. Merritt was refunded—made no bargain or sale of the goods to the Plaintiffs, but was informed it was all arranged, so he gave himself no concern about the matter. The sale took place down stairs—none of the goods were disturbed in the rooms—bought three or four looking-glasses said to be in the rooms up stairs—did not go up stairs to see them—did not see either of the Plaintiffs at the sale—bought three dozen chairs, may have seen *one of them*—considered the object of the sale to be to secure the property against any subsequent execution—expected other executions would be issued—never saw advertisements of a Sheriff's Sale of Mr. Adams's property—it was his impression the sale was understood between the purchasers and the family to be for the purpose of securing it from liability for actions then pending against Mr. Adams. The Deputy Sheriff put up goods and otherwise conducted the sale as directed by Mr. Adams's family.

*Witness* 3d.—John Clark, Esq., Brother-in-Law of Plaintiffs, was invited to first sale of effects of the late George Adams—purchased some of them. Did not take charge of the goods purchased nor pay for them, nor transfer them to the Miss Adams's; left his son George A. Clark to arrange for them, believes they were made over to the Miss Adams's—thinks the object of the sale was to secure the goods against other executions to issue against Mr. Adams in favor of the same parties—believes Mr. Adams had ample means to pay the execution and avoid the sale, if he had wished to do so—had nothing to do with the matter after making the purchases—bought three sofas in one lot for 15s.

*Witness* 4th.—George A. Clark—Nephew of Plaintiffs was first apprised of the first sale the evening previous on stopping at Mr.

Adams's gate in a carriage—attended the sale, made some purchases. Did not see a Sheriff's advertisement of this sale as is usual—the goods he purchased were delivered or made over to his Aunts (the Plaintiffs), and were not removed—none of the goods sold were taken away by any purchasers—all were made over to the Plaintiffs —none were purchased to be taken away by purchasers—all the chattels were sold for about £40—believed Mr. Adams had means of paying the amount of the execution, and need not have submitted to the sale if he had wished to avoid it—understood the object of allowing the sale and purchasing to be to secure the chattels of Mr. Adams, his Grandfather, against other executions expected to be issued against him. Paid for the goods bought by his Father (John Clark, last witness)—made them over to his Aunts (the Plaintiffs) —believed his Aunts had funds of their own—his Father had nothing to do with the goods after the purchase, nor their transfer to Plaintiffs. —He believed it was not the intention of any purchaser to take away any of the chattels, but it was understood they were to be bought in to secure them in the name of the Plaintiffs against further executions expected against his Grandfather (the late Mr. Adams.) Did not make any profit in the purchases and re-sale.

*Witness* 5th, Wm. Hamilton Merritt, attended the first sale at Mr. Adams's house—went there to buy in goods and chattels for the family ; it was understood the purchases made wereto be transferred to the Plaintiffs—made some purchases, one was a horse for £7, which he valued at £25—said there was competition amongst purchasers at the sale—was aware judgment had been entered against Mr. Adams for £2,496 in April last—the purchases were made to be made over to the Plaintiffs, so as not to be liable to seizure under this judgment—paid for the goods purchased out of money received from Polly (one of the Plaintiffs) for that purpose. This arose out of a series of thirty actions arising out of the same business, by which Mr. Adams and himself were persecuted. Believed Mr. Adams had ample means to pay the first execution had he been desirous of doing so ; but the sale was made for the purpose of changing ownership of the goods. The furniture was not disturbed in the house at the sale, nor was any removed or taken away by the purchasers. Was aware the whole of Mr. Adams's effects were sold for about £40. The whole of this evidence was marked by strong personal feeling and confusion, and was severely animadverted upon.

*Witness* 6th—Thomas Adams, is Brother of Plaintiffs. Was present at the first sale of the goods and chattels of his late Father, George Adams Esq.,—acted on behalf of Plaintiffs in arranging the sale, inviting bidders and relieving the purchasers of the goods

bought—received money from Plaintiffs for this purpose—Sisters (the Plaintiffs) had funds derived from house-rents and sales of vegetables, &c.—Resides in his Father's house with Plaintiffs.—Is aware his Father paid £40 into Sheriff's Office to cover this execution before the sale—understood this money was left instead of personal sureties, that the chattels would be forthcoming to the Sheriff. His Father borrowed this money—thinks his Father could have paid the execution conveniently, the sale need not have taken place for want of funds, if his father had wished to avoid the sale; it was arranged in the family that the sale should take place, and that the property should be purchased and made over to the Plaintiffs to save it from other executions to come out—was aware judgment had been taken at Toronto in April last for £2496, in a suit Tobin & Murison against his Father under covenants of a mortgage. All the goods and chattels of his father were sold for about £40, 12s. 6d. Had not seen a Sheriff's advertisement of this property.

*Witness* 7th—Elias S. Adams Esq., was present at first sale of effects of his late Father—purchased some of them, and resold them to his Sisters, (the Plaintiffs) who had money of their own—valued the property bought at over three fold the price paid for it. The property was not disturbed, was put up in lots and none removed—was aware his Father had previously paid about £40 into the Sheriff's Office to cover this execution; the whole of his Fathers effects were sold, and realized only about £42 12s. 6d.—understood other executions might be issued against his Father's property. These effects were sold to avoid liability for such further executions; the property so sold being made over and held by the Plaintiffs. His Father could have paid the first execution had he wished to prevent the first sale.

*Witness* 8th—H. Mittleberger Esq. was at first sale of the goods and chattels of the late George Adams, under execution in favor of Tobin & Murison—made some purchases—left the goods purchased for the Plaintiffs—received back his money from Thomas Adams—thinks Mr. Adams (his late Father-in-law) could have paid the execution without permitting the sale. Was aware judgment had been given against Mr. Adams in April last for a mortgage of £2000 and interest; the goods were bought and made over to Plaintiffs to secure them against executions to be issued under this judgment.

*Witness 9th*—B. Foley Esq., Plaintiffs' Attorney, proved the second sale of the property to be the same property as was sold at first sale.

The Hon. Henry Sherwood stated to the Court that the line of defence was to show a systematic course of frauds practised by the late George Adams in collusion with his family and others,

in causing all his goods and chattels to be brought to sale for the paltry sum of £40, and transfering extensive and valuable Real Estate to various members of his family during the last three years, without consideration, as deeds of gift; or for inadequate consideration, or for mere personal bonds, without any payment down, on long terms of payment, and without being secured by mortgage, or the obligations given being made available to the payment of his debts; all which would be brought to bear on the question before the Court.

This was stated in reply to an abstract question raised by Mr. Sullivan as to the admission of such testimony; which, after discussion, was ruled by the Court to be with Mr. Sherwood.

The Plaintiff's Counsel here rested the case.

Mr. Sherwood then addressed the Court and Jury in an eloquent, fervid and dignified strain. He treated the croakings of the Plaintiffs' Counsel about oppression and persecution as the last refuge of defeated dishonesty, and very impressively retorted the charge of persecution. He put it to the Jury whether it was not persecution to keep the confiding creditor out of the money he had in generosity loaned to save the debtor from ruin in years gone by. Persecution—exclaimed the learned Gentleman—is it not persecution to withold from the honorable and generous creditor the fruits of his early industry by driving him from Court to Court to seek the restoration of money loaned in good faith? Was it not persecution to the creditor and his family, and perhaps his creditors too, to have withheld from him his honest dues by every species of fraud, and by every petty dishonorable legal quibble to be thrown over from Court to Court, and in the meantime, the property of the debtor transferred under ficticious sales or otherwise, either wholly to defraud the creditor, or multiply his cost, difficulty and time in rendering it available to his just claims? The learned Gentleman appealed to the Jury as guardians of the interests alike of debtor and creditor—as guardians of the honor and fidelity of trade and commerce, as the refuge of the Tradesman, the Farmer the Merchant and every member of society who has ought to vend, and who, relying on the integrity and wealth of the purchaser and the laws of the land, supported by Jurors to vindicate his rights, reposes faith in these ~~particulars~~ protections and the honor of man, and grants the favor of credit for his goods or the loan of money as an investment for the support of his family He dwelt at some length on the palpable fraud evinced by every witness on the part of the Plaintiffs—the most gross and unvarnished frauds—by a collusion of relatives, who unscrupulously (it cannot be said unblushingly) stood up in a witness box to testify before the world of the part each had respectively taken in shame-

less efforts to defraud honorable merchants, resident hundreds of miles distant, of money loaned. The Hon. Gentleman reiterated his appeal to the Jury as guardians of the character of the legal tribunals of the country, to save it from the stigma of lending countenance to the practice of such frauds by a collusion of a large family of respectability—each of whom should have an individual influence in their respective spheres—hence the success of such a chain of iniquities; as it would tend seriously to the destruction of that good faith between man and man, which ever distinguishes the walks of men where honor and morality have their proper sway. The learned Counsel stated that witnesses were in Court by whom he could prove a series of fraudulent transfers of property ; some worth thousands of pounds having changed hands without any consideration, and others to the value of one to three thousand pounds, without any other security than mere personal bonds, not secured on any property by mortgage or otherwise. After reviewing the strong testimony elicited under cross-examination—and shewing that each had convicted himself and the Plaintiffs—out of their own mouths—the case was here rested ; the learned Counsel deemed the evidence *extracted* from either of the Plaintiffs witnesses sufficiently strong to warrant a verdict for the Defendant, he therefore abstained from calling up the witnesses present for the defence.

Mr. Justice Jones then charged the Jury. His Lordship said that if the Jury concurred with him that the sale was a collusion between the relatives to place the property out of the reach of the creditors of Mr. Adams, and any subsequent executions, they would give a verdict for the Defendant (the Sheriff). His Lordship referred with much emphasis to the deposit made at the Sheriff's Office to cover the execution, as shewing that the sale was unnecessary, and that as it did go on it was done in collusion between Mr. Adams and the Sheriff for the purpose of carrying out his plans, to shield his property from further executions expected to be issued ; His Lordship dwelt upon the fact, proved by some of the family, that the whole of Mr. Adams's chattels had been sold, and just so managed by the purchasers, as not to sell for any thing more than would pay the execution &c. £42 12*s*. 6*d*., which property the same witnesses (being members of the family) proved to be worth about £150, and claimed this sum from the Sheriff His Lordship read the evidence and then more strongly than before said to the Jury ; if you believe with me that the sale was a fraud or collusion of the family as before stated, you will give a verdict for the Defendant—if you should be of a different opinion, as to the evidence, the Plaintiffs claim about £150.

The Jury retired for some time and returned a verdict of £100 for the Plaintiffs.

## REMARKS.

The preceedings case, briefly as it is stated, cannot fail to strike the reader as having more in it than appears on the surface.

It shows clearly enough, however, these simple facts which could not have failed to take possession of the minds of every person present at the trial—nor could have failed to produce a verdict for the Defendant, had not part of the Jurors been predetermined to adjudge a verdict for the Plaintiffs, viz :—

1st. That an execution was issued against the chattels of George Adams, Esqr., for about £40—cost in suits of ejectment in favor of Messrs. Tobin and Murison.

2nd. That Mr. Adams was abundantly able to pay it without allowing himself and family to witness a sale of his effects.

3rd. That he did procure £40, and pay it into the Sheriff's Office, so as to prevent the Sheriff from making an ordinary public sale.

4th. That if he had not procured the money otherwise, his *amiable* daughters (the Plaintiffs) had abundant means to pay this claim for their Father, and thereby save him the *anguish*, so glowingly depicted by Mr. Sullivan, as having brought the *poor old man* down *broken hearted* to a *premature death, at the age of* 73 *years*—a consequence which, when charged upon the *hard hearted creditor*—may in good grace, (however ungallantly) be reflected upon the amiable Plaintiffs or witnesses, for not having satisfied this paltry claim before the sale took place, and thereby saved this eulogized example of all that is honorable, just and good, from the anguish of seeing his household goods sold from him—which anguish, it is asserted, caused his death.

5th. That if there had been no ulterior fraudulent motive, the execution could have been discharged with the £40 deposited—and if it had been borrowed, the daughters could just as well have paid the sum of £42 12*s.* 6*d.* before as after this sale, which is ludicrously alleged to have taken place as a Sheriff's sale.

6th. That through collusion by Mr. Adams, at the Sheriff's Office, a sale was arranged to take place, without public notice, and such family sale did take place before a select invited audience.

7th. That this collusive sale, between the witnesses, the late Mr. Adams, and the Sheriff or his officers, was effected for the purpose of changing ownership of Mr. Adams's Goods and Chattels—so as to prevent their being taken under an execution daily expected to be issued for £2496—a verdict having been entered at Toronto in

April last for this sum, being a debt and interest due under a mortgage granted Messrs. Tobin and Murison for cash borrowed in 1840, and payable on the 15th July, 1842.

8th. That if Mr. Adams had not means of his own nor in his family, to pay this execution of £40, and he had been honestly inclined, he would have allowed the Sheriff to sell of his Goods to the amount of the execution, and the effects sold would have been taken as the *bona fide* property of the buyers.

9th. That the sale was so guardedly managed, that the Goods which these witnesses prove were sold for about £42 12*s*. 6*d*. the same witnesses now prove to be of the value of about £150, and yet Mr. Merritt distinctly declared that there was competition at the first sale, when the goods (worth £150) were sold for £42 12*s*. 6*d*

10th. That for examples of this competition—a Horse bought by William H. Merritt for £7, was proved to be worth £25; 4 Cows sold for £6, were proved to have been sold since into the family at Sheriff's sale for over £16, and would undoubtedly sell readily for £6 to £8 each, being a superior breed; a farming utensil sold for £1 5*s*., was proved to be worth £12 10*s*.; a table bought by Mr. George A. Clark, was by him sworn to be worth £10, and on being corrected by the Plaintiff's Attorney, reduced it to £5; this point need not be pressed farther, William Hamilton Merritt, Esquire, M. P. P., having sworn that there was competition at the first sale, and that it was one of a series of thirty persecuting law suits. Competition and persecution, forsooth! when a horse declared under his oath to be worth £25 was sold to himself for £7! when property worth £5 *a* £10 goes for 10*s*.! when 4 superior cows worth £25 sell for £6! this is competition in this enlightened age—William Hamilton Merritt has sworn it is! Competition indeed, where goods are sold in the chambers unseen of the purchasers, who are down in the parlour! *Vide* the evidence of Mr. Benson.

11th. That in some things all the witnesses are agreed, viz: that they had not seen any public notice of the sale, that they were invited to the sale the day it took place, that none of the goods were removed before or after the sale—that none of them claimed the goods bought as their own, but allowed them to pass over to the Plaintiffs who (or their brother or nephew, or William Hamilton Merritt, for them, and with the Plaintiffs' own money) bought the goods back.

Mr. Sherwood having been instructed to state that the late Mr. Adams in collusion with his family and others, had passed various transfers of property, so as to avoid its being made available to the payment of his liabilities to Messrs. Tobin & Murison direct, and

to the late firm of John Mittleberger & Co., who are debtors to Messrs Tobin & Murison, it is due to Mr. Sherwood that his clear and emphatic declarations on this head should be supported by undoubted evidence, which appears abundantly in the following extract from a certificate of records at the Registry Office of Lincoln. It is to be observed that the agreements of Merritt & Adams, under which they become jointly liable to John Mittleberger & Co., are dated the 28th August, 1839, and their liabilities to Tobin & Murison arise out of that agreement. The transfers of property by Mr. Adams are therefore taken subsequently to 1839, viz :—

*(See Appendix E.)*

This statement speaks volumes of evidence in support of Mr. Sherwood's declaration that a series of systematic frauds had been practised by Mr. Adams in collusion with his family.

For example :—

| | | | |
|---|---|---|---|
| Mr. Elias S. Adams, son of the late George Adams, is the Assignee of | | | |
| 5 acres in the heart of St. Catharines. | Consideration....5s. | Value | £3,000 *a* £5,000 |
| Also 12 acres near St. Catharines, | .....Do.....5s. | Value | 300 |
| Catharine and Mary Adams, Daughters of Mr. Adams, and Plaintiffs in this suit *vs.* the Sheriff, half acre and valuable house &c. St. Cath. | .....Do.....5s | Value | 1000 |
| Henry Mittleberger, Son-in-Law to Mr. Adams, half an acre St. Catharines. | .....Do.....£630 | Value | 1000 |
| 80 acres near St. Cath. | .....Do..... 1000 | Value | 2000 |
| | £1630 15*s*. | | £7300 |

Thus properties have been conveyed to members of Mr. Adams's family worth £7,000 *a* £8,000, for £1630 15s., and most of it at the evening of his life, when he knew the extent of his liabilities, and they to whom the late transfers were made were alike aware of his indebtedness, as shall hereafter be shown in these pages ; and as respects the last two transfers wherein considerations of £1630 are stated, the obligations for this (if any) are refused to be exhibited and made available to the creditors of Mr. Adams's estate. And it is not pretended that any security has been given for the payment of this large sum, not even mortgages on the same property, but it is simply alleged that mere personal bonds are given payable some ten years hence ; and this is all the explanation the creditors of the

estate have been able to wring from the family. This transfer too was made in April, the month in which the verdict was taken in favor of Tobin and Murison for £2496, amount of mortgage and interest, and when the Grantee was considered dangerously ill, or merely raising from an illness which seriously alarmed the whole family ; when he could have had but little heart to assume such a large liability, merely as a speculation.

Other properties to the value of some £3000 *a* £4000 have been alienated by Mr. Adams, but do not appear on record, a concealment which cannot be designed for any honest purpose—as *bona fide* sales and securities for the purchase money to so large a value would not be so carelessly treated.

This statement shows a conveyance to the Board of Works for which £200 seems to have been paid in November 1843—hence the late Mr. Adams, otherwise accredited to be free from debt, could not be supposed so destitute of means in June '44, considering the rents and profits of his property and farm.

One other sale is introduced in this extract of Records to point out a striking peculiarity, viz: that to Samuel Street, Esq., apparently a true sale. This, it will be seen, is granted by George Adams and wife ; all those to the family, granted since the mortgages to Tobin and Murison are made, are simply by George Adams, leaving them liable to claim of dower by his widow.

This appears to be a strong vindication of Mr. Sherwood's charge of frauds against this family, who appear in the double capacities of parties to the collusion and interested witnesses to shield themselves and allies from merited exposure as parties to the alleged frauds, which it is too obvious, were adopted and pursued for the purpose of saving the property from liabilities to the writer, arising out of agreements made in 1839 on the faith of his being responsible to the extent of his engagements through the large properties he was then possessed of.

It may be as well to extend this paper a little further to show up some of the gross misrepresentations which have been put in circulation with reference to certain actions at Law, referred to by Mr. Merritt as a series of thirty persecutions. Hitherto I have looked upon these matters as being private affairs with which the public had no concern and need not be disturbed—but so maliciously and designedly unfounded in fact are the representations which have been made about these affairs, that the truth becomes public property, and the forbearance, under which I have denied myself the justice of a brief vindication, ceases to be a virtue.

To this end, some statements will follow to show the real state of the accounts referred to—and if the language of defiance can be con

veyed in courtesy, it is in that spirit held out to Mr. Merritt (and his confederate witnesses in the preceding action) to transmit to me, in writing, through a reputable channel, or present to the public any statement to the contrary, or any one charge against me, which, if sustained, should detract from a fair fame. An open, manly and tangible charge, is courted as earnestly as the authors of the unscrupulous slanders by which I have been assailed are despised.

On the other hand, whilst I abstain from impeaching my adversaries, otherwise than is implied in these papers, I pledge myself to sustain every statement made, or make due amends for any error pointed out to me.

With reference to appendix A, I have the satisfaction to state that my books were kept by efficient book-keepers, to whom (with my books and vouchers) I feel quite safe in referring. These are my reliance for vindication.

Appendix B and C are taken from Balance Sheets and statements prepared from the old Books of the Proprietors of the Welland Canal Mills, under Mr. Merritt's own direction, by the late Mr. Beaton and others in the employ of Merritt & Adams. Thus all my statements shall be based on undeniable evidence, derived through disinterested parties.

It is here shown that Mr. Adams has not paid enough to keep down the interest on his share of the cost of the mill—all he had paid being about £600 on account of £2,306. It is because he owed this balance he granted a mortgage to Tobin and Murison, in March 1840—payable in 1842, and this is the mortgage which T. and M. were driven to prosecute in 1843, and still remains unpaid in October 1844—and it is to avoid this generous loan all these transfers have been made—and out of this arose the action of Mr. Adams' daughters against Mr. Sheriff Kingsmill.

Appendix D shows that the Mill Company were indebted on the 15th July, 1839, in the sum of £11,395 10*s* 3*d*, against which there has been realised £6357 16*s* 2*d*, leaving a balance of £5,037 14*s* 1*d* standing unpaid on their old Books, when returned to Mr. Merritt in 1843. Now, as none of these old debts remain against the Mill Company, is it not obvious that I paid this balance of £5,037 14*s* 1*d* for them, which has been accumulating with interest, insurance and other charges, until the balance stated in appendix A (£6,654) had accrued ? Of this balance it appears, by appendix C, that the reputed owners of the mill (Merritt, Adams and Scott) are really the debtors of the Mill Company, on account of the cost of the Mill.—Thus the proprietors of the Mill were insolvent when I took up their account, and mainly so for the reason that neither Merritt, Adams nor Scott had paid for their respective shares of the Mill.

I now take up Mr. Merritt's declaration in the foregoing deposition that a series of thirty actions had been brought against them. In the first place I will show what claims I have upon these reputed owners or proprietors of the Welland Canal Mills—and what actions I have brought.

1st. Is for Mr. Merritt's private account as per appendix A, £820.

2d. Is for (£7,253) the balance of account against Merritt, Adams and Scott, as the Mill Company, for money advanced in payment of their old debts, when they were insolvent and threatened with prosecution, at which time Messrs. Tobin and Murison were induced to take up my account and enable me to make these generous advances to save the Mill Company from utter ruin in 1840. This is all I have demanded of them—and I have put it to them time and again, that all I required was that they should satisfy Messrs. Tobin and Murison for this amount in any way they could, so as to reduce it from their claim against my firm—as I had borrowed the money for them and they should return it. But, forsooth, Mr. Merritt plausibly states that he is willing to arbitrate the whole business. What is there in the above account to submit to arbitration? I can establish every item, and have done so by abundant proof—hence the idea of submitting this to arbitration is not more absurd than it would have been to have asked the Upper Canada and Commercial Banks to have submitted to arbitration, whether Mr. Merritt and his endorsers should be held liable for £6,500 over due to these institutions in January, 1840, the payment of which by me, is what produced the balance now prosecuted for, as above. These are the actions I have brought against these people, and none other can be found on the records of the Courts.

My further claim is for their share of the losses incurred in the disastrous year of 1842. This claim I have not yet prosecuted for, but when so advised, it will be supported by a bond granted me in 1839, in the penalty of £16,000, binding them to pay me the proportion of two-thirds of all the losses of the firm of John Mittleberger & Co., or to convey to me the Welland Canal Mills and other property therein named, to be sold for the purpose of enabling me to make the money required to pay their share of the losses.

This is all I ask of them, and settlements have been offered on this basis, viz, that they should pay the above claims of about £8000, and then their proportion of two-thirds of the losses; this short sentence embraces the whole business at issue between us; however they may attempt to mystify it this is the plain truth, and I defy them to show that I have claimed any thing more of them, or authorized any other claim.

True, Messrs. Tobin and Murison have been forced to instituting actions of ejectment upon mortgages granted by Merritt & Adams, one of which covered some ten or twelve tenants, hence an action must be brought against each occupant of the property. This one mortgage accounts for about a dozen of Mr. Merritt's stated series of thirty persecuting actions. I leave this veritable gentleman to score his number, as I cannot; but I can state with truth that if the existing papers had laid them open to fourfold this number, and they had been proceeded with, the fault would have been chargeable to Mr. Merritt himself, and his inexcusable conduct; and I may as well add that there is now a fair prospect, that in order to render available to the execution now in the Sheriff's Office for £2496 the property fraudulently transferred by the late Mr. Adams, some dozen or more actions at law or equity will ere long be instituted.

I should perhaps say something farther with reference to Mr. Adams's mortgage. The property covered by the mortgage is not considered worth more than half the mortgage money and interest; hence the mortgagees held the property and prosecuted upon the covenants of the mortgage, for which execution has been issued in the sum of £2496. As required by law, the chattels were first seized and brought to sale for about £100, in opposition to the claims set up that they had all been sold before for about £42 12*s.* 6*d.*; this is the fraudulent proceeding out of which the action arose to which this paper refers. Now let the reader tarry to ask himself what course he would have taken had he an execution against Mr. Adams's property? would he have been satisfied and abandoned his claim, on being told by two unmarried daughters, inmates of Mr. Adams's house, that all the property in their Father's house and on the farm had been bought for £40, and was not therefore liable to execution against Mr. Adams? Would it be believed that Mr. Adams, a man of reputed wealth and large Estates, had been deprived of all his wealth by an execution for £40, when it was notorious that the only debt he had paid with property worth some ten thousand pounds, was an execution for £40? Would any claimant have been content with a return from the Sheriff that Mr. Adams had no effects and was utterly ruined? Would the reply satisfy any person who had loaned Mr. Adams £2000 hard cash (to save him from ruin in 1840,) that Mr. Adams had lost all his property, was utterly ruined? How lost it? How ruined, and none of his debts paid save £40? Why simply this, he had been *ruined* by transferring his property to his sons, daughters, and sons-in-law, as a means of defrauding his creditors, impoverishing himself, and enriching his family.

I beg to refer again to appendix B to carry the conviction that

Messrs. Merritt, Adams, and Scott are indebted to the amount of £9,500, that the joint property of the Mill Company can only be expected to realize £7,500, that the result of their business before 1839 is that they had lost all they had paid for the Mill before that date, and are still indebted about £2000 on their effects—this sum short of paying their old debts arising from Mr. Merritt's management of the business of the Mills.

These papers have been extended to greater length than was intended. I shall therefore close for the present by explicitly declaring that if any one remark or statement has been made in which I am in error, I shall be most happy to correct it effectually, and I shall abstain from commenting upon the extraordinary conduct which has been pursued by Mr. Merritt, as some more appropriate occasion may be opened for laying any grave charges which it is due to society and the laws of the country, that I should prefer against him.

JOHN MITTLEBERGER.

St. Catharines, 12th October, 1844.

## APPENDIX A.

*Statement of claims for which actions have been brought by John Mittleberger & Co. against Messrs. Merritt, Adams and Scott, as proprietors of the Welland Canal Mills, and against Mr. Merritt alone for his private (family) account.*

| | £ | s. | d. | £ | s. | d. |
|---|---|---|---|---|---|---|
| Advances made in paying the old debts of the Mill Company, which were due by them to Banks and various persons for their own transactions, before I had any concern with them and the Mill, &c. | 11,184 | 6 | 2 | | | |
| Less..... | | | | | | |
| Collected from debts due them and otherwise made out of their assets. | 4,530 | | | | | |
| Balance due 31st Dec., 1842,..... | 6,654 | 6 | 2½ | | | |
| Interest to July, 1844..... | 599 | 11 | 9½ | | | |
| | | | | 7,253 | 18 | |
| Advances made to Mr. Merritt in Money, Merchandise, Provisions, &c. for himself and family, from July 1839 to 1843. | 755 | 16 | 10½ | | | |
| Interest to July 1844..... | 64 | 5 | 1½ | 820 | 2 | |
| Due John Mittleberger & Co., and now in suit..... | | | | 8,074 | | |

They owe me (or my firm) the above, wholly apart from my business

or its losses. This is all that I have called upon them to pay, and all I have sued them for. Besides this, Merritt and Adams are bound to me in a penalty of £16,000—to pay over two-thirds of all the losses by the firm of John Mittleberger & Co. This bond is separate from all other agreements between us. All this is due to Tobin and Murison, and all I ask is that they should be paid, and I relieved from this liability.

## APPENDIX B.

*Statement of the affairs of the Proprietors of the Welland Canal Mills—viz: Messrs. Merritt, Adams, & Scott—shewing that they were Bankrupt or Insolvent in* 1839.

Their own old Books show these liabilities.

| | | | |
|---|---|---|---|
| Say July, 1844. | Debt due to John Mittleberger & Co. as per preceding statement, £8074, say . . . . . | £8,000 0 0 | |
| | Mortgage on the Mill property, due to S. Street. . . . . | 1,500 0 0 | £9,500 0 0 |
| | Against the above indebtedness of the Mill Company all they have to show as joint assets and estate is as follows :— | | |
| | The "Welland Mill," which, if placed at public sale, would possibly produce cash £5,000, say . . | 6,500 0 0 | |
| | Debts due them for transactions before July, 1839, of which there may be collected in the course of time . . . . . | 1,000 0 0 | £7,500 0 0 |
| | Thus—if the assets of the Mill Company were put up to sale—they would be insolvent from £2,000 to £3,000. This deficit would have to be made up out of the Private Estates of Messrs. Merritt and Adams. | | £2,000 0 0 |
| | Of the above balance, Mr. Merritt's private account should be paid by himself. . . . . | 820 0 0 | |

## APPENDIX C.

*Statement of the indebtedness of each of the owners of the Mills on account of their Shares of the original cost, which if paid to the Credit of the Mill Co. by each of the reputed Owners (called Proprietors) would enable the Mill Co. to pay its old debts—or nearly so.*

This is from their own old Books.

| | £ | s. | d. | £ | s. | d. |
|---|---|---|---|---|---|---|
| George Adams.—Balance due on his share in the Mill. . . . . | 1690 | 5 | 9¾ | | | |
| Add Interest from 1836—is 8 years —say. . . . . | 311 | 4 | 2¼ | 2501 | 10 | 0 |
| Wm. H. Merritt.—Balance due on his share in the Mill. . . . . | 112 | 12 | 10¾ | | | |
| Account against his father, which Mr. Adams says should be paid by Mr. Merritt. . . . . | 116 | 0 | 10 | | | |
| Amount of S. H. Farnsworth's account which Mr. Adams says is wholly Mr. Merritt's and should not have been in the books of the Mill Company. . . . . | 851 | 10 | 0 | | | |
| Interest on the whole, averaged, at 8 years. . . . . | 518 | 8 | 3¾ | 1598 | 12 | 0 |
| Thomas Scott.—Balance due on his share in the Mill. . . . . | 400 | 2 | 5 | | | |
| Eight years' Interest. . . . . | 192 | 0 | 7 | 592 | 3 | 0 |
| | | | | £4,692 | 5 | 0 |

Thus the respective owners or partners are together indebted to their firm nearly £5,000, on account of the cost of the Mill. Hence the Mill was never fully paid for until I borrowed the money for the Mill Company from Tobin & Murison, viz. the sum of £4,000. For this Merritt gave a mortgage for £2,000, and Adams another for £2,000, payable 15th July, 1842, of which no part has been paid. It is for this last that Mr. Adams's property is under seizure, and his assets have been advertised by the Sheriff and partly sold.

## APPENDIX D.

*Copy of a statement of the affairs of the Mill Company, viz: Merritt Adams and Scott—prepared by the late Mr. P. G. Beaton, from their Books at Mr. Merritt's house, and under his direction and pay. (Any person knowing Mr. Beaton and seeing this statement in his writing would vouch for its correctness.)*

STATEMENT OF THE AFFAIRS OF THE PROPRIETORS OF THE WELLAND

CANAL MILLS, 1st FEBRUARY, 1841.

| | | | |
|---|---|---|---|
| Debts due by the proprietors, 15th July, 1839, per Schedule then rendered, | | | 11,395 10 3 |
| There were adventures then unsold, amounting to | £4,690 0 7 | | |
| Less loss on them, | 180 12 5 | £4,509 8 2 | |
| Of the debts then due to the proprietors, there have been collected by John Mittleberger & Co., about | | 979 16 | |
| | | 5,489 4 2 | |
| Of the debts still remaining due, the following are supposed good: | | | |
| Thomas Merritt, sen., | £116 0 10 | | |
| John Gibson, | 32 12 7 | | |
| Walter Dittrick, | 192 18 4 | | |
| George Patton, | 38 2 7½ | | |
| Schooner Highlander, | 300 0 0 | | |
| James Ingersoll, | 205 7 3 | | |
| Hiram Slate, | 15 11 4 | | |
| S. H. Farnsworth, | 851 10 6 | | |
| John Bostwick, | 68 11 11½ | | |
| George Adams, | 1,690 5 9¾ | | |
| W. H. Merritt, | 112 12 10½ | | |
| Thomas Scott, | 400 2 5 | | |
| H. & S. Jones, say | 600 0 0 | | |
| | 4,623 16 6 | | |
| Add 18 months interest, to 1st February, 1841, | 416 2 10 | 5,039 19 4 | 10,529 3 6 |
| | | | 866 6 9 |
| Due to Mr. Street, | | | 1,500 |
| | | | 2,366 6 9 |
| Add debts still unpaid, viz: above account, | | 5,039 19 4 | |
| Less since collected, | | 868 11 11½ | 4,171 7 4½ |
| Thus it is clear they owed this balance 1st February, 1841, apart from interest, insurance &c. since—and as they are now out of debt, how came they so, having at the same time their assets returned to them with their old books. | | | 6,537 14 1 |
| Add five years interest to July 1844, | | | 1961 2 |
| | | | £8498. 16. 1. |

The above shows that £5,039 19 4 was represented as good, and was made over for collection and the use of my firm as capital in trade—but in this too I was most grossly deceived, having only collected £868. And it is not a little remarkable that the greatest delinquents were Messrs. Merritt, Adams and Scott—neither of whom ever paid a groat. That due by Mr. Adams being, in fact, represented by the £2000 mortgage now in execution, 12. October, 1844.

# APPENDIX E.

| No. of Instrument | Instrument. | Date. | Locality. | Nature of Property. | No. of Acres. | Date of record | Grantors. | Grantees. | Consideration. | Present value about |
|---|---|---|---|---|---|---|---|---|---|---|
| 12854.. | Deed of Gift..... | 13th Jan. 1840 | St. Catharines. | ..... | half acre.... | 27 Feb., 1840 | G. Adams & Wife. | Catharine and Mary Adams | £. 5s. 0 | £1000 |
| 12916.. | Mortgage..... | 3d March, '40 | do..... | W. C. Mills. | half an acre. | 23rd May '40 | G. Adams & W H Merritt | Tobin & Murison..... | Conditional | |
| 12934.. | Do..... | 24th April, '40 | do..... | two shops & | 7 acres ..... | 2nd June '40 | G. Adams... | Do. do..... | 2000 0 0 | 1000 |
| 441.. | Deed Bargain & Sale. | 12th July, '41 | do..... | ..... | 5 acres ..... | 16th Aug. '41 | G. Adams .. | Elias S. Adam. | 5 0 | say 4000 |
| 502.. | Do. do. do.. | 4th Sept., '41 | Grantham..... | ..... | 80 acres..... | 14th Oct. '41 | G. Adams & Wife ..... | Samuel Street. | 300 0 0 | say 300 |
| 1391. | Do. do. do.. | 7th April, '43 | do ..... | ..... | 12 do. 3 rods | 12th July '43 | G. Adams .. | Elias S. Adams | 5 0 | say 300 |
| 1582.. | Do. do. do.. | 8th Novr., '43 | do ..... | ..... | 34A. 2R 3P . | 15th Jan. '44 | do..... | Board of Works | 200 0 0 | say 200 |
| 1695.. | Do. do. do.. | 10th April., '44 | St. Catharines. | ..... | 1 acre..... | 15th Aprl. '44 | do..... | Henry Mittleberger..... | 630 0 0 | say 1000 |
| 1696.. | Do. do. do.. | " " " | Grantham..... | ..... | 80 acres .... | " " " | do..... | do. | 1000 0 0 | 2000 |

NOTE—This does not include other transfers of valuable property without any consideration—which shall not be stated because it does not appear on Record and would implicate a gentleman of high standing in public service whose kindness of heart has betrayed him into the acceptance of a transfer of the Homestead of Mr. Adams, of the value of 2,500*l.*, which remains in the occupation of Mr. Adams's family as usual.

ERRATA—Page 5, line 7 from the bottom, for "particulars" read "protections."